

From: Philip Hixon [phixon@mhla-law.com]

Sent: Wednesday, April 01, 2009 12:07 PM

To: Xidis, Claire; Jorgensen, Jay T.; Theresa Noble Hill; Gorham, Patricia

Cc: Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassetlawfirm.com; bfreeman@cwlaw.com; bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com; cdolan@faegre.com; Charles.Moulton@arkansasag.gov; cmerkes@mhla-law.com; ctucker@rhodesokla.com; daniel.lennington@oag.ok.gov; david@cgmlawok.com; dberlin@levberlin.com; dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com; dpage@riggsabney.com; driggs@riggsabney.com; dustin.darst@kutakrock.com; erin.thompson@kutakrock.com; Baker, Fred; fc_docket@oag.state.ok.us; fevans@lathropgage.com; Fitzpatrick, Fidelma; gchilton@hcdattorneys.com; Todd, Gordon D.; gweeks@bassetlawfirm.com; gwo@owenslawfirm.com; Moll, Ingrid; jelrod@cwlaw.com; jgraves@bassetlawfirm.com; jgriffin@lathropgage.com; jlennart@riggsabney.com; Orent, Jonathan D.; jraine@titushillis.com; jrussell@fellerssnider.com; jtbanks@hhlaw.com; jtucker@rhodesokla.com; jwisley@cwlaw.com; kctucker@bassetlawfirm.com; kelly_burch@oag.state.ok.us; Kendra.Jones@arkansasag.gov; kkleee@faegre.com; klewis@rhodesokla.com; kwilliams@hallestill.com; lbullock@bullock-blakemore.com; leanne.burnett@crowedunlevy.com; Heath, Lee M.; Ward, Liza; mcollins@faegre.com; mgraves@hallestill.com; Hopson, Mark D.; michael.bond@kutakrock.com; Rousseau, Michael; mvahlberg@gablelaw.com; njordan@lightfootlaw.com; Nicole Longwell; pbuchwald@ryanwhaley.com; pryan@ryanwhaley.com; rconrad@uschamber.com; rer@owenslawfirm.com; reynolds@titushillis.com; rfunk@cwlaw.com; rgarren@riggsabney.com; richard.ford@crowedunlevy.com; richard.mullins@mcafeetaft.com; rnance@riggsabney.com; robert.george@tyson.com; rredemann@pmrlaw.net; rsanders@youngwilliams.com; rtl@kiralaw.com; sbartley@mwsgw.com; sgentry@riggsabney.com; sjantzen@ryanwhaley.com; Scott McDaniel; steve.williams@youngwilliams.com; sweaver@riggsabney.com; Green, Thomas C.; terry@thewestlawfirm.com; trevor_hammons@oag.state.ok.us; twalker@faegre.com; Webster, Timothy K.; vbronson@cwlaw.com; waddell@fec.net; wbassett@bassetlawfirm.com; wcox@lightfootlaw.com; tcoble@rhodesokla.com

Subject: RE: State of Oklahoma v. Tyson

Importance: High

Claire:

Joint defense agreement or not, each party has the right to reasonable notice of each deposition and, further, has the right to have someone present at that deposition, whether in person or on the telephone. The USPE deposition was initially noticed for April 2. On March 27, without any notice to the defendants, the date was changed to April 3, which conflicts with the Blake deposition which was also noticed by Plaintiffs. Unlike Plaintiffs, who have upward of 30 attorneys working on this matter, Peterson's legal team has limited resources. I intended to cover both the USPE and Blake depositions by telephone. Without reasonable notice to Peterson, you have made that an impossibility. The other members of Peterson's team have other obligations.

On this note, I will refer you to Rule 32(a)(5), which prohibits the use of any deposition against a party which did not have reasonable notice of the deposition. The rule effectively defines that notice period as 11 days. Peterson did not have 11 days notice of the April 3 date and, thus, did not have reasonable notice of the deposition. If Plaintiffs insist on conducting the deposition without reasonable notice to Peterson, it has little choice but to move the Court for a protective order, preserving the protections provided in the rule from Plaintiffs' unreasonable and unilateral conduct.

PLEASE CONFIRM THAT PLAINTIFFS INSIST ON CONDUCTING THE USPE DEPOSITION ON APRIL 3 IN VIOLATION OF RULE 32(a). Thank you for your attention to this matter.

Philip D. Hixon, Esq.

McDaniel, Hixon, Longwell & Acord, PLLC

320 South Boston Avenue

Suite 700

Tulsa, Oklahoma 74103-3706

918.382.9200 Office Phone

918.382.9282 Facsimile

www.mhla-law.com cid:image001.jpg@01C87EE0.!

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From: Xidis, Claire [mailto:cxidis@motleyrice.com]**Sent:** Wednesday, April 01, 2009 9:50 AM**To:** Jorgensen, Jay T.; Theresa Noble Hill; Gorham, Patricia

Cc: Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassettlawfirm.com; bfreeman@cwlaw.com; bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com; cdolan@faegre.com; Charles.Moulton@arkansasag.gov; cmerkes@mhla-law.com; ctucker@rhodesokla.com; daniel.lennington@oag.ok.gov; david@cgmlawok.com; dberlin@levberlin.com; dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com; dpage@riggsabney.com; driggs@riggsabney.com; dustin.darst@kutakrock.com; erin.thompson@kutakrock.com; Baker, Fred; fc_docket@oag.state.ok.us; fevans@lathropgag.com; Fitzpatrick, Fidelma; gchilton@hcdattorneys.com; Todd, Gordon D.; gweeks@bassettlawfirm.com; gwo@owenslawfirmmpc.com; Moll, Ingrid; jelrod@cwlaw.com; jgraves@bassettlawfirm.com; jgriffin@lathropgag.com; jlennart@riggsabney.com; Orent, Jonathan D.; jrailey@titushillis.com; jrussell@fellerssnider.com; jtbanks@hhlaw.com; jtucker@rhodesokla.com; jwisley@cwlaw.com; ktucker@bassettlawfirm.com; kelly_burch@oag.state.ok.us; Kendra.Jones@arkansasag.gov; kkleee@faegre.com; klewis@rhodesokla.com; kwilliams@hallestill.com; lbullock@bullock-blakemore.com; leanne.burnett@crowedunlevy.com; Heath, Lee M.; Ward, Liza; mcollins@faegre.com; mgraves@hallestill.com; Hopson, Mark D.; michael.bond@kutakrock.com; Rousseau, Michael; mvahlberg@gablelaw.com; njordan@lightfootlaw.com; Nicole Longwell; pbuchwald@ryanwhaley.com; Philip Hixon; pryan@ryanwhaley.com; rconrad@uschamber.com; rer@owenslawfirmmpc.com; reynolds@titushillis.com; rfunk@cwlaw.com; rgarren@riggsabney.com; richard.ford@crowedunlevy.com; richard.mullins@mcafeetaft.com; rnance@riggsabney.com; robert.george@tyson.com; rredemann@pmlaw.net; rsanders@youngwilliams.com; rtl@kiralaw.com; sbartley@mws gw.com; sgentry@riggsabney.com; sjantzen@ryanwhaley.com; Scott McDaniel; steve.williams@youngwilliams.com; sweaver@riggsabney.com; Green, Thomas C.; terry@thewestlawfirm.com; trevor_hammons@oag.state.ok.us; twalker@faegre.com; Webster, Timothy K.; vbronson@cwlaw.com; waddell@fec.net; wbassett@bassettlawfirm.com; wcxx@lightfootlaw.com; tcoble@rhodesokla.com

Subject: RE: State of Oklahoma v. Tyson

Jay - I have been trying to work with you, but the problem is that contrary to your representation below, there are not actually any other mutually convenient dates that exist. The Court has made it clear that discovery ends April 16 and has not granted Defendants' motion for extension of time. Thus, the dates the USPE has kindly offered us after the close of discovery are not only inconvenient, but they are not in compliance with the scheduling order.

You keep referencing the 5 depositions scheduled after the discovery cut-off, but as you are aware 3 of these have to be taken past the deadline because they are impossible to take within the deadline due to the extensions

of time Defendants received for their expert reports. The fourth deposition is a deposition Defendants are demanding to take (Jack Jones) and the deponents' schedule has no availability before April 16. The fifth deposition is a non-party (Edwards) is whose schedule cannot accommodate any dates before April 16.

USPE is different from these five depositions because the deponent IS actually available within the discovery period. Defendants have a joint defense agreement, and they have not all been attending all of the other fact witness and non-party depositions that have been going forward. Furthermore, at the depositions where defendants have multiple lawyers, some of these lawyers don't even ask any questions. Thus, I urge you to reconsider your position and move forward with this deposition on April 3 without bothering the Court with this issue.

Claire Xidis | Attorney at Law | Motley Rice LLC
28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | cxidis@motleyrice.com
o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

From: Jorgensen, Jay T. [mailto:jjorgensen@sidley.com]
Sent: Wednesday, April 01, 2009 10:03 AM
To: Theresa Noble Hill; Xidis, Claire; Gorham, Patricia
Cc: Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassettlawfirm.com; bfreeman@cwlaw.com; bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com; cdolan@faegre.com; Charles.Moulton@arkansasag.gov; cmerkes@mhla-law.com; ctucker@rhodesokla.com; daniel.lennington@oag.ok.gov; david@cgmlawok.com; dberlin@levberlin.com; dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com; dpage@riggsabney.com; driggs@riggsabney.com; dustin.darst@kutakrock.com; erin.thompson@kutakrock.com; Baker, Fred; fc_docket@oag.state.ok.us; fevans@lathropgage.com; Fitzpatrick, Fidelma; gchilton@hcdattorneys.com; Todd, Gordon D.; gweeks@bassettlawfirm.com; gwo@owenslawfirmmpc.com; Moll, Ingrid; jelrod@cwlaw.com; jgraves@bassettlawfirm.com; jgriffin@lathropgage.com; jlennart@riggsabney.com; Orent, Jonathan D.; jrainey@titushillis.com; jrussell@fellerssnider.com; jtbanks@hhlaw.com; jtucker@rhodesokla.com; jwisley@cwlaw.com; ktucker@bassettlawfirm.com; kelly_burch@oag.state.ok.us; Kendra.Jones@arkansasag.gov; kkleee@faegre.com; klewis@rhodesokla.com; kwilliams@hallestill.com; lbullock@bullock-blakemore.com; leanne.burnett@crowedunlevy.com; Heath, Lee M.; Ward, Liza; mcollins@faegre.com; mgraves@hallestill.com; Hopson, Mark D.; michael.bond@kutakrock.com; Rousseau, Michael; mvahlberg@gablelaw.com; njordan@lightfootlaw.com; nlongwell@mhla-law.com; pbuchwald@ryanwhaley.com; phixon@mhla-law.com; pryan@ryanwhaley.com; rconrad@uschamber.com; rer@owenslawfirmmpc.com; reynolds@titushillis.com; rfunk@cwlaw.com; rgarren@riggsabney.com; richard.ford@crowedunlevy.com; richard.mullins@mcafeetaft.com; rnance@riggsabney.com; robert.george@tyson.com; rredemann@pmrlaw.net; rsanders@youngwilliams.com; rtl@kiralaw.com; sbartley@mws gw.com; sgentry@riggsabney.com; sjantzen@ryanwhaley.com; smcdaniel@mhla-law.com; steve.williams@youngwilliams.com; sweaver@riggsabney.com; Green, Thomas C.; terry@thewestlawfirm.com; trevor_hammons@oag.state.ok.us; twalker@faegre.com; Webster, Timothy K.; vbronson@cwlaw.com; waddell@fec.net; wbassett@bassettlawfirm.com; wcox@lightfootlaw.com; tcoble@rhodesokla.com
Subject: RE: State of Oklahoma v. Tyson

Claire, I don't understand why we can't work together to schedule this deposition at one of the mutually convenient times that have been offered. We've agreed with your colleagues to allow Plaintiffs to take several (I believe 4 or 5) depositions beyond April 16. I'm confident that the Court wants us to work together on scheduling issues rather than bother the judge. I ask you to reconsider. If not, we'll file an emergency motion to quash.

From: Theresa Noble Hill [mailto:THill@rhodesokla.com]
Sent: Wednesday, April 01, 2009 9:49 AM
To: Xidis, Claire
Cc: Jorgensen, Jay T.; Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassettlawfirm.com; bfreeman@cwlaw.com; bjones@faegre.com; Narwold, Bill;

bryan.burns@tyson.com; cdolan@faegre.com; Charles.Moulton@arkansasag.gov; cmerkes@mhla-law.com; ctucker@rhodesokla.com; daniel.lennington@oag.ok.gov; david@cgmlawok.com; dberlin@levberlin.com; dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com; dpage@riggsabney.com; driggs@riggsabney.com; dustin.darst@kutakrock.com; erin.thompson@kutakrock.com; Baker, Fred; fc_docket@oag.state.ok.us; fevans@lathropgage.com; Fitzpatrick, Fidelma; gchilton@hcdattorneys.com; Todd, Gordon D.; gweeks@bassettlawfirm.com; gwo@owenslawfirm.com; Moll, Ingrid; jelrod@cwlaw.com; jgraves@bassettlawfirm.com; jgriffin@lathropgage.com; jlennart@riggsabney.com; Orent, Jonathan D.; jrainey@titushillis.com; jrussell@fellerssnider.com; jtbanks@hhlaw.com; jtucker@rhodesokla.com; jwisley@cwlaw.com; ktucker@bassettlawfirm.com; kelly_burch@oag.state.ok.us; Kendra.Jones@arkansasag.gov; kkleee@faegre.com; klewis@rhodesokla.com; kwilliams@hallestill.com; lbullock@bullock-blakemore.com; leanne.burnett@crowedunlevy.com; Heath, Lee M.; Ward, Liza; mcollins@faegre.com; mgraves@hallestill.com; Hopson, Mark D.; michael.bond@kutakrock.com; Rousseau, Michael; mvahlberg@gablelaw.com; njordan@lightfootlaw.com; nlongwell@mhla-law.com; pbuchwald@ryanwhaley.com; phixon@mhla-law.com; pryan@ryanwhaley.com; rconrad@uschamber.com; rer@owenslawfirm.com; reynolds@titushillis.com; rfunk@cwlaw.com; rgarren@riggsabney.com; richard.ford@crowedunlevy.com; richard.mullins@mcafeetaft.com; rnance@riggsabney.com; robert.george@tyson.com; rredemann@pmrlaw.net; rsanders@youngwilliams.com; rtl@kiralaw.com; sbartley@mwsqw.com; sgentry@riggsabney.com; sjantzen@ryanwhaley.com; smcdaniel@mhla-law.com; steve.williams@youngwilliams.com; sweaver@riggsabney.com; Green, Thomas C.; terry@thewestlawfirm.com; trevor_hammons@oag.state.ok.us; twalker@faegre.com; Webster, Timothy K.; vbronson@cwlaw.com; waddell@fec.net; wbassett@bassettlawfirm.com; wcox@lightfootlaw.com; tcoble@rhodesokla.com

Subject: Re: State of Oklahoma v. Tyson

If the Blake deposition is going forward on April 3 in Auburn, Alabama, then we have a conflict.

Sent from my iPhone

On Apr 1, 2009, at 8:36 AM, "Xidis, Claire" <cxidis@motleyrice.com> wrote:

Jay, the only alternative date the USPE was able to offer within the discovery deadline is April 16, a date which does not work for the State.

Meanwhile, the State has advised Defendants that we do not intend to call D.I. Wilkerson, whose deposition was noticed by the Defendants for April 3, and the State has also advised Defendants that even if you all want to go forward with his deposition despite the fact the State does not intend to call Wilkerson at trial, the State cannot go forward with the deposition on April 3rd anyway. (See Trevor's email to Bob Redemann on this topic)

This resolves the Cal-Maine conflict for the USPE depo on April 3rd. Thus, the State plans to go forward with the USPE deposition, as scheduled on April 3. Please advise if Defendants would like to have a phone available.

Claire Xidis | Attorney at Law | Motley Rice LLC
28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | cxidis@motleyrice.com
o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

From: Xidis, Claire

Sent: Monday, March 30, 2009 7:57 PM

To: Xidis, Claire; 'Jorgensen, Jay T.'; Jaromin, Michelle; 'ajsiegel@hhlaw.com'; 'bblakemore@bullock-blakemore.com'; 'bchadick@bassettlawfirm.com'; 'bfreeman@cwlaw.com'; 'bjones@faegre.com'; Narwold, Bill; 'bryan.burns@tyson.com'; 'cdolan@faegre.com'; 'Charles.Moulton@arkansasag.gov'; 'cmerkes@mhla-law.com'; 'ctucker@rhodesokla.com'; 'daniel.lennington@oag.ok.gov'; 'david@cgmlawok.com';

'dberlin@levberlin.com'; 'dchoate@fec.net'; 'dehrich@faegre.com';
 'dmann@mckennalong.com'; 'dpage@riggsabney.com'; 'driggs@riggsabney.com';
 'dustin.darst@kutakrock.com'; 'erin.thompson@kutakrock.com'; Baker, Fred;
 'fc_docket@oag.state.ok.us'; 'fevans@lathropgage.com'; Fitzpatrick, Fidelma;
 'gchilton@hcdattorneys.com'; 'Todd, Gordon D.'; 'gweeks@bassettlawfirm.com';
 'gwo@owenslawfirmpc.com'; Moll, Ingrid; 'jelrod@cwlaw.com';
 'jgraves@bassettlawfirm.com'; 'jgriffin@lathropgage.com'; 'jlennart@riggsabney.com'; Orent,
 Jonathan D.; 'jraine@titushillis.com'; 'jrussell@fellerssnider.com'; 'jtbanks@hhlaw.com';
 'jtucker@rhodesokla.com'; 'jwisley@cwlaw.com'; 'kctucker@bassettlawfirm.com';
 'kelly_burch@oag.state.ok.us'; 'Kendra.Jones@arkansasag.gov'; 'klee@faegre.com';
 'klewis@rhodesokla.com'; 'kwilliams@hallestill.com'; 'lbullock@bullock-blakemore.com';
 'leanne.burnett@crowedunlevy.com'; Heath, Lee M.; Ward, Liza; 'mcollins@faegre.com';
 'mgraves@hallestill.com'; 'Hopson, Mark D.'; 'michael.bond@kutakrock.com'; Rousseau,
 Michael; 'mvahlberg@gablelaw.com'; 'njordan@lightfootlaw.com'; 'nlongwell@mhla-law.com';
 'pbuchwald@ryanwhaley.com'; 'phixon@mhla-law.com'; 'pryan@ryanwhaley.com';
 'rconrad@uschamber.com'; 'rer@owenslawfirmpc.com'; 'reynolds@titushillis.com';
 'rfunk@cwlaw.com'; 'rgarren@riggsabney.com'; 'richard.ford@crowedunlevy.com';
 'richard.mullins@mcafeetaft.com'; 'rnance@riggsabney.com'; 'robert.george@tyson.com';
 'rredemann@pmrlaw.net'; 'rsanders@youngwilliams.com'; 'rtl@kiralaw.com';
 'sbartley@mwsgw.com'; 'sgentry@riggsabney.com'; 'sjantzen@ryanwhaley.com';
 'smcdaniel@mhla-law.com'; 'steve.williams@youngwilliams.com'; 'sweaver@riggsabney.com';
 'Green, Thomas C.'; 'terry@thewestlawfirm.com'; 'thill@rhodesokla.com';
 'trevor_hammons@oag.state.ok.us'; 'twalker@faegre.com'; 'Webster, Timothy K.';
 'vbronson@cwlaw.com'; 'waddell@fec.net'; 'wbassett@bassettlawfirm.com';
 'wcox@lightfootlaw.com'; 'tcoble@rhodesokla.com'

Subject: RE: State of Oklahoma v. Tyson

Jay,

I am writing to confirm the phone conversation we just had. You called earlier this afternoon to meet and confer with me on the numerous issues. As my assistant explained to you, I was on the phone when you called, but when I was able to call you back approximately 2 hours later, Defendants had already filed their motion (Dkt # 1946). Thus, the conversation we had was apparently Defendants' attempt to meet and confer *after* filing their motion.

As I explained during our conversation, the numerous issues raised in your motion involve various deponents and various counsel for the State who have been handling these issues.

At this time, the State does not agree to the extensions of time Defendants have requested in their motion. We will review your motion, and if we can agree to any of the issues set forth in your motion we will let you know. You agreed that Defendants would withdraw any portions of the motion that we reach an agreement about.

On the issue of the US Poultry and Egg subpoena, during our call I expressed my concern that I learned today you had contacted the US Poultry and Egg Association last week about rescheduling the deposition of their 30(b)(6) witness (which was subpoenaed by the State) prior to contacting the State about the possibility of rescheduling this deposition. At this time, there is no other date the State can be available for the deposition. Bob Sanders wrote this afternoon with a specific reason why April 3 is a problem for the Cal-Maine counsel. The State will take that into consideration and will try to see if anything can be done to alter the schedule within the discovery period. I also expressed my concern that I learned today Tyson is noticing the Idabel deposition for April 3. Thus, it seems that April 3 was not really a conflict for Tyson.

Claire Xidis | Attorney at Law | Motley Rice LLC
 28 BridgeSide Blvd. | Mt. Pleasant, SC 29464 | cxidis@motleyrice.com
 o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

From: Xidis, Claire

Sent: Monday, March 30, 2009 6:35 PM

To: 'Jorgensen, Jay T.'; Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassettlawfirm.com; bfreeman@cwlaw.com; bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com; cdolan@faegre.com; Charles.Moulton@arkansasag.gov; cmerkes@mhla-law.com; ctucker@rhodesokla.com; daniel.lennington@oag.ok.gov; david@cgmlawok.com; dberlin@levberlin.com; dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com; dpage@riggsabney.com; driggs@riggsabney.com; dustin.darst@kutakrock.com; erin.thompson@kutakrock.com; Baker, Fred; fc_docket@oag.state.ok.us; fevans@lathropgage.com; Fitzpatrick, Fidelma; gchilton@hcdattorneys.com; Todd, Gordon D.; gweeks@bassettlawfirm.com; gwo@owenslawfirmmpc.com; Moll, Ingrid; jelrod@cwlaw.com; jgraves@bassettlawfirm.com; jgriffin@lathropgage.com; jlennart@riggsabney.com; Orent, Jonathan D.; jrainey@titushillis.com; jrusell@fellerssnider.com; jtbanks@hhlaw.com; jtucker@rhodesokla.com; jwisley@cwlaw.com; kctucker@bassettlawfirm.com; kelly_burch@oag.state.ok.us; Kendra.Jones@arkansasag.gov; klee@faegre.com; kewis@rhodesokla.com; kwilliams@hallestill.com; lbullock@bullock-blakemore.com; leanne.burnett@crowedunlevy.com; Heath, Lee M.; Ward, Liza; mcollins@faegre.com; mgraves@hallestill.com; Hopson, Mark D.; michael.bond@kutakrock.com; Rousseau, Michael; mvaahlberg@gablelaw.com; njordan@lightfootlaw.com; nlongwell@mhla-law.com; pbuchwald@ryanwhaley.com; phixon@mhla-law.com; pryan@ryanwhaley.com; rconrad@uschamber.com; rer@owenslawfirmmpc.com; reynolds@titushillis.com; rfunk@cwlaw.com; rgarren@riggsabney.com; richard.ford@crowedunlevy.com; richard.mullins@mcafeetaft.com; rnance@riggsabney.com; robert.george@tyson.com; rredemann@pmrlaw.net; rsanders@youngwilliams.com; rtl@kiralaw.com; sbartley@mwsqw.com; sgentry@riggsabney.com; sjantzen@ryanwhaley.com; smcdaniel@mhla-law.com; steve.williams@youngwilliams.com; sweaver@riggsabney.com; Green, Thomas C.; terry@thewestlawfirm.com; thill@rhodesokla.com; trevor_hammons@oag.state.ok.us; twalker@faegre.com; Webster, Timothy K.; vbronson@cwlaw.com; waddell@fec.net; wbassett@bassettlawfirm.com; wcox@lightfootlaw.com; tcoble@rhodesokla.com

Subject: RE: State of Oklahoma v. Tyson

Jay - I have been on the phone. I am now off the phone. I received your message from my assistant and will call you shortly. According to the time on the message, it has only been about an hour since you called, and there is no note about it being "urgent." You really don't need to be sending emails to the whole group badgering me about calling you back. I find your demand for an immediate response highly ironic in light of the difficult time I have had lately getting responses from the Defendants on deposition scheduling issues.

Claire Xidis | Attorney at Law | Motley Rice LLC

28 BridgeSide Blvd. | Mt. Pleasant, SC 29464 | cxidis@motleyrice.com

o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

From: Jorgensen, Jay T. [<mailto:jjorgensen@sidley.com>]

Sent: Monday, March 30, 2009 5:58 PM

To: Xidis, Claire; Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassettlawfirm.com; bfreeman@cwlaw.com; bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com; cdolan@faegre.com; Charles.Moulton@arkansasag.gov; cmerkes@mhla-law.com; ctucker@rhodesokla.com; daniel.lennington@oag.ok.gov; david@cgmlawok.com; dberlin@levberlin.com;

dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com;
dpage@riggsabney.com; driggs@riggsabney.com; dustin.darst@kutakrock.com;
erin.thompson@kutakrock.com; Baker, Fred; fc_docket@oag.state.ok.us;
fevans@lathropgage.com; Fitzpatrick, Fidelma; gchilton@hcdattorneys.com; Todd, Gordon
D.; gweeks@bassettlawfirm.com; gwo@owenslawfirmmpc.com; Moll, Ingrid;
jelrod@cwlaw.com; jgraves@bassettlawfirm.com; jgriffin@lathropgage.com;
jlennart@riggsabney.com; Orent, Jonathan D.; jrainey@titushillis.com;
jrusell@fellerssnider.com; jtbanks@hhlaw.com; jtucker@rhodesokla.com;
jwisley@cwlaw.com; kctucker@bassettlawfirm.com; kelly_burch@oag.state.ok.us;
Kendra.Jones@arkansasag.gov; klee@faegre.com; kewis@rhodesokla.com;
kwilliams@hallestill.com; lbullock@bullock-blakemore.com;
leanne.burnett@crowedunlevy.com; Heath, Lee M.; Ward, Liza; mcollins@faegre.com;
mgraves@hallestill.com; Hopson, Mark D.; michael.bond@kutakrock.com; Rousseau,
Michael; mvaahlberg@gablelaw.com; njordan@lightfootlaw.com; nlongwell@mhla-law.com;
pbuchwald@ryanwhaley.com; phixon@mhla-law.com; pryan@ryanwhaley.com;
rconrad@uschamber.com; rer@owenslawfirmmpc.com; reynolds@titushillis.com;
rfunk@cwlaw.com; rgarren@riggsabney.com; richard.ford@crowedunlevy.com;
richard.mullins@mcafeetaft.com; rnance@riggsabney.com; robert.george@tyson.com;
rredemann@pmlaw.net; rsanders@youngwilliams.com; rtl@kiralaw.com;
sbartley@mwsqw.com; sgentry@riggsabney.com; sjantzen@ryanwhaley.com;
smcdaniel@mhla-law.com; steve.williams@youngwilliams.com; sweaver@riggsabney.com;
Green, Thomas C.; terry@thewestlawfirm.com; thill@rhodesokla.com;
trevor_hammons@oag.state.ok.us; twalker@faegre.com; Webster, Timothy K.;
vbronson@cwlaw.com; waddell@fec.net; wbassett@bassettlawfirm.com;
wcox@lightfootlaw.com; tcoble@rhodesokla.com

Subject: RE: State of Oklahoma v. Tyson

Claire,

I left an urgent message for you on a related topic. Would you call me? My cell is 801-891-3779.

Jay

From: Xidis, Claire [<mailto:cxidis@motleyrice.com>]

Sent: Monday, March 30, 2009 5:05 PM

To: Jorgensen, Jay T.; Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com;
bchadick@bassettlawfirm.com; bfreeman@cwlaw.com;
bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com; cdolan@faegre.com;
Charles.Moulton@arkansasag.gov; cmerkes@mhla-law.com; ctucker@rhodesokla.com;
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dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com;
dpage@riggsabney.com; driggs@riggsabney.com; dustin.darst@kutakrock.com;
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jwisley@cwlaw.com; kctucker@bassettlawfirm.com; kelly_burch@oag.state.ok.us;
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Michael; mvaahlberg@gablelaw.com; njordan@lightfootlaw.com; nlongwell@mhla-law.com

law.com; pbuchwald@ryanwhaley.com; phixon@mhla-law.com;
 pryan@ryanwhaley.com; rconrad@uschamber.com; rer@owenslawfirmmpc.com;
 reynolds@titushillis.com; rfunk@cwlaw.com; rgarren@riggsabney.com;
 richard.ford@crowedunlevy.com; richard.mullins@mcafeetaft.com;
 rnance@riggsabney.com; robert.george@tyson.com; rredemann@pmrlaw.net;
 rsanders@youngwilliams.com; rtl@kiralaw.com; sbartley@mwsqw.com;
 sgentry@riggsabney.com; sjantzen@ryanwhaley.com; smcdaniel@mhla-law.com;
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 twalker@faegre.com; Webster, Timothy K.; vbronson@cwlaw.com; waddell@fec.net;
 wbassett@bassettlawfirm.com; wcox@lightfootlaw.com; tcoble@rhodesokla.com

Subject: RE: State of Oklahoma v. Tyson

Jay-

I'm not categorically refusing to discuss this with you. You emailed me on Saturday unilaterally demanding that we change the date of the deposition to accommodate the schedules of unidentified individuals who have not communicated one word about this deposition since it was noticed weeks ago. The notice was served on Defendants March 11, and if Defendants were interested in this deposition of a non-party subpoenaed by the State, it was not incumbent upon the State to invite them to discuss the deposition, but the Defendants' responsibility to communicate that they were interested in being involved.

You asked to change the date of the deposition in your email, and I simply explained why that is not possible and offered to try to make a phone available to facilitate participation by Defendants. I also explained that the date was selected because that is the only date that worked for the State, the deponent, and counsel for USPE. The fact that extenuating circumstances may have forced the parties to enter into some limited agreements for other specific depositions does not mean that this situation automatically warrants a deviation from the Court's (now very clear) deadline for the discovery cut-off.

Among the dozens of attorneys working on this case on behalf of the Defendants, I'm sure there is someone who can join the deposition on Friday by phone. Are you representing that Defendants really do not have ANY counsel that can participate in this deposition, even by phone? You have not even specifically identified what Defendants' conflict or problem with availability really is, yet you expect the State to reschedule this deposition at your convenience. This is an unreasonable request.

Claire Xidis | Attorney at Law | Motley Rice LLC
 28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | cxidis@motleyrice.com
 o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

From: Jorgensen, Jay T. [<mailto:jjorgensen@sidley.com>]

Sent: Monday, March 30, 2009 1:44 PM

To: Xidis, Claire; Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassettlawfirm.com; bfreeman@cwlaw.com; bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com; cdolan@faegre.com; Charles.Moulton@arkansasag.gov; cmerkes@mhla-law.com; ctucker@rhodesokla.com; daniel.lennington@oag.ok.gov; david@cgmlawok.com; dberlin@levberlin.com; dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com; dpage@riggsabney.com; driggs@riggsabney.com; dustin.darst@kutakrock.com; erin.thompson@kutakrock.com; Baker, Fred; fc_docket@oag.state.ok.us; fevans@lathropgag.com; Fitzpatrick, Fidelma; gchilton@hcdattorneys.com; Todd,

Gordon D.; gweeks@bassettlawfirm.com; gwo@owenslawfirm.com; Moll, Ingrid; jelrod@cwlaw.com; jgraves@bassettlawfirm.com; jgriffin@lathropgage.com; jlennart@riggsabney.com; Orent, Jonathan D.; [jraine@titushillis.com](mailto:jrainey@titushillis.com); jrusell@fellerssnider.com; jtbanks@hhlaw.com; jtucker@rhodesokla.com; jwisley@cwlaw.com; kctucker@bassettlawfirm.com; kelly_burch@oag.state.ok.us; Kendra.Jones@arkansasag.gov; klee@faegre.com; kewis@rhodesokla.com; kwilliams@hallestill.com; lbullock@bullock-blakemore.com; leanne.burnett@crowedunlevy.com; Heath, Lee M.; Ward, Liza; mcollins@faegre.com; mgraves@hallestill.com; Hopson, Mark D.; michael.bond@kutakrock.com; Rousseau, Michael; mvaahlberg@gablelaw.com; njordan@lightfootlaw.com; nlungwell@mhla-law.com; pbuchwald@ryanwhaley.com; phixon@mhla-law.com; pryan@ryanwhaley.com; rconrad@uschamber.com; rer@owenslawfirm.com; reynolds@titushillis.com; rfunk@cwlaw.com; rgarren@riggsabney.com; richard.ford@crowedunlevy.com; richard.mullins@mcafeetaft.com; rnance@riggsabney.com; robert.george@tyson.com; rredemann@pmrlaw.net; rsanders@youngwilliams.com; rtl@kiralaw.com; sbartley@mwsqw.com; sgentry@riggsabney.com; sjantzen@ryanwhaley.com; smcdaniel@mhla-law.com; steve.williams@youngwilliams.com; sweaver@riggsabney.com; Green, Thomas C.; terry@thewestlawfirm.com; thill@rhodesokla.com; trevor_hammons@oag.state.ok.us; twalker@faegre.com; Webster, Timothy K.; vbronson@cwlaw.com; waddell@fec.net; wbassett@bassettlawfirm.com; wcox@lightfootlaw.com; tcoble@rhodesokla.com

Subject: RE: State of Oklahoma v. Tyson

Claire,

Defendants were aware that you were negotiating a change from the date that you noticed. I assumed you would include us in that discussion, but you did not. Our request to be included in the scheduling is not unreasonable. I regret that you have categorically refused to discuss scheduling this deposition at a time that works for Defendants. As you know, the parties have previously agreed to take approximately 5 depositions beyond the April 16 date. I don't see why this deposition is different.

Please let me know today if you are willing to reconsider. Otherwise, Defendants will be forced to file a motion to quash.

Jay

From: Xidis, Claire [<mailto:cxidis@motleyrice.com>]

Sent: Monday, March 30, 2009 9:49 AM

To: Jorgensen, Jay T.; Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassettlawfirm.com; bfreeman@cwlaw.com; bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com; cdolan@faegre.com; Charles.Moulton@arkansasag.gov; cmerkes@mhla-law.com; ctucker@rhodesokla.com; daniel.lennington@oag.ok.gov; david@cgmlawok.com; dberlin@levberlin.com; dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com; dpage@riggsabney.com; driggs@riggsabney.com; dustin.darst@kutakrock.com; erin.thompson@kutakrock.com; Baker, Fred; fc_docket@oag.state.ok.us; fevans@lathropgage.com; Fitzpatrick, Fidelma; gchilton@hcdattorneys.com; Todd, Gordon D.; gweeks@bassettlawfirm.com; gwo@owenslawfirm.com; Moll, Ingrid; jelrod@cwlaw.com; jgraves@bassettlawfirm.com; jgriffin@lathropgage.com; jlennart@riggsabney.com; Orent, Jonathan D.; [jraine@titushillis.com](mailto:jrainey@titushillis.com); jrusell@fellerssnider.com; jtbanks@hhlaw.com; jtucker@rhodesokla.com; jwisley@cwlaw.com; kctucker@bassettlawfirm.com;

kelly_burch@oag.state.ok.us; Kendra.Jones@arkansasag.gov;
kklee@faegre.com; klewis@rhodesokla.com; kwilliams@hallestill.com;
lbullock@bullock-blakemore.com; leanne.burnett@crowedunlevy.com; Heath,
Lee M.; Ward, Liza; mcollins@faegre.com; mgraves@hallestill.com; Hopson,
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pbuchwald@ryanwhaley.com; phixon@mhla-law.com;
pryan@ryanwhaley.com; rconrad@uschamber.com; rer@owenslawfirmnpc.com;
reynolds@titushillis.com; rfunk@cwlaw.com; rgarren@riggsabney.com;
richard.ford@crowedunlevy.com; richard.mullins@mcafeetaft.com;
rnance@riggsabney.com; robert.george@tyson.com; rredemann@pmrlaw.net;
rsanders@youngwilliams.com; rtl@kiralaw.com; sbartley@mwsqw.com;
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wcox@lightfootlaw.com; tcoble@rhodesokla.com

Subject: RE: State of Oklahoma v. Tyson

Jay,

Defendants received a copy of the USPE subpoena on March 11, and never communicated anything about scheduling this deposition or wanting to be involved until your Saturday, March 28 email below.

As you are aware from the motion filed by the State on Friday, the State's position is that the discovery deadline has not been extended for any purpose other than the depositions of Defendants' experts disclosed on March 31.

April 3 is the one date that worked for the State, the USPE attorney, and the deponent before the close of discovery on April 16. Thus, we cannot change the date. If it facilitates things for the Defendants, I'm sure we can make a telephone available at the deposition if any defense counsel would like to participate by phone.

Claire Xidis | Attorney at Law | Motley Rice LLC
28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | cxidis@motleyrice.com
o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

From: Jorgensen, Jay T. [<mailto:jjorgensen@sidley.com>]
Sent: Saturday, March 28, 2009 11:21 AM
To: Jaromin, Michelle; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassettlawfirm.com; bfreeman@cwlaw.com;
bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com;
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Moll, Ingrid; jelrod@cwlaw.com; jgraves@bassettlawfirm.com;
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wcox@lightfootlaw.com; tcoble@rhodesokla.com

Cc: Xidis, Claire

Subject: RE: State of Oklahoma v. Tyson

Claire,

Defendants would like to be included in the re-scheduling of this deposition. The lawyers who are working on this can't make it on the 2nd or 3rd, but now that Judge Cleary has extended the discovery deadline we propose the week of April 20-24.

Jay

From: Jaromin, Michelle [<mailto:mjaromin@motleyrice.com>]

Sent: Friday, March 27, 2009 10:19 AM

To: ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com;
bchadick@bassettlawfirm.com; bfreeman@cwlaw.com;
bjones@faegre.com; Narwold, Bill; bryan.burns@tyson.com;
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wbassett@bassettlawfirm.com; wcox@lightfootlaw.com;
tcoble@rhodesokla.com

Cc: Xidis, Claire

Subject: FW: State of Oklahoma v. Tyson

Please be advised that the deposition of U.S. Poultry & Egg noticed in the attached subpoena will go forward on April 3rd at 9:00 am, rather than April 2nd as set forth in the subpoena.

Michelle M. Jaromin | Paralegal | Motley Rice LLC
 28 Bridgeside Blvd. | Mt. Pleasant, SC 29464
 o. 843.216.9477 | f. 843.216.9450 | mjaromin@motleyrice.com

From: Jaromin, Michelle **On Behalf Of** Xidis, Claire
Sent: Wednesday, March 11, 2009 3:41 PM
To: 'ajsiegel@hhlaw.com'; 'bblakemore@bullock-blakemore.com'; 'bchadick@bassettlawfirm.com'; 'bfreeman@cwlaw.com'; 'bjones@faegre.com'; Narwold, Bill; 'bryan.burns@tyson.com'; 'cdolan@faegre.com'; 'Charles.Moulton@arkansasag.gov'; 'cmerkes@mhla-law.com'; 'ctucker@rhodesokla.com'; 'daniel.lennington@oag.ok.gov'; 'david@cgmlawok.com'; 'dberlin@levberlin.com'; 'dchoate@fec.net'; 'dehrich@faegre.com'; 'dmann@mckennalong.com'; 'dpage@riggsabney.com'; 'driggs@riggsabney.com'; 'dustin.darst@kutakrock.com'; 'erin.thompson@kutakrock.com'; Baker, Fred; 'fc_docket@oag.state.ok.us'; 'fevans@lathropgage.com'; Fitzpatrick, Fidelma; 'gchilton@hcdattorneys.com'; 'gtodd@sidley.com'; 'gweeks@bassettlawfirm.com'; 'gwo@owenslawfirm.com'; Moll, Ingrid; 'jelrod@cwlaw.com'; 'jgraves@bassettlawfirm.com'; 'jgriffin@lathropgage.com'; 'jjorgensen@sidley.com'; 'jlennart@riggsabney.com'; Orent, Jonathan D.; '[jraine@titushillis.com](mailto:jrainey@titushillis.com)'; 'jrussell@fellerssnider.com'; 'jtbanks@hhlaw.com'; 'jtucker@rhodesokla.com'; 'jwisley@cwlaw.com'; 'kctucker@bassettlawfirm.com'; 'kelly_burch@oag.state.ok.us'; 'Kendra.Jones@arkansasag.gov'; 'kklee@faegre.com'; 'klewis@rhodesokla.com'; 'kwilliams@hallestill.com'; 'lbullock@bullock-blakemore.com'; 'leanne.burnett@crowedunlevy.com'; Heath, Lee M.; Ward, Liza; 'mcollins@faegre.com'; 'mgraves@hallestill.com'; 'mhopson@sidley.com'; 'michael.bond@kutakrock.com'; Rousseau, Michael; 'mvahlberg@gablelaw.com'; 'njordan@lightfootlaw.com';

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 'robert.george@tyson.com'; 'rredemann@pmrlaw.net';
 'rsanders@youngwilliams.com'; 'rtl@kiralaw.com';
 'sbartley@mwsgw.com'; 'sgentry@riggsabney.com';
 'sjantzen@ryanwhaley.com'; 'smcdaniel@mhla-law.com';
 'steve.williams@youngwilliams.com'; 'sweaver@riggsabney.com';
 'tcgreen@sidley.com'; 'terry@thewestlawfirm.com';
 'thill@rhodesokla.com'; 'trevor_hammons@oag.state.ok.us';
 'twalker@faegre.com'; 'twebster@sidley.com'; 'vbronson@cwlaw.com';
 'waddell@fec.net'; 'wbassett@bassettlawfirm.com';
 'wcox@lightfootlaw.com'

Cc: Jaromin, Michelle; Xidis, Claire

Subject: State of Oklahoma v. Tyson

Attached please find a Subpoena and Notice of Deposition to the U.S. Poultry & Egg Association, as well as the related Certificate of Service.

Michelle M. Jaromin | Paralegal | Motley Rice LLC
 28 Bridgeside Blvd. | Mt. Pleasant, SC 29464
o. 843.216.9477 | **f.** 843.216.9450 | mjaromin@motleyrice.com

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